

Serial No.: 10/816,677
Isis A. D. Ghali

Status of the Claims

1-42 are pending herein.

Remarks

1. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each of the following allegedly patentably distinct species of adhesive:

- a. curable adhesive;
- b. pressure sensitive adhesive;
- c. solvent assisted adhesive; or
- d. mussel protein adhesive

Responsive to this requirement, Applicant elects species c), solvent assisted adhesive, for initial prosecution on the merits.

2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each of the following allegedly patentably distinct species of medical device:

- a. in absence of microparticles; or
- b. medical article further comprising microparticles

Responsive to this requirement, Applicant elects species b), medical article further comprising microparticles, for initial prosecution on the merits.

3. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each of the following allegedly patentably distinct species of microparticles:

- a. microspheres;
- b. two populations of microparticles having different composition; or
- c. two populations of microparticles having different size distribution

Responsive to this requirement, Applicant elects species a), microspheres for initial prosecution on the merits, with traverse.

This election is made with traverse because, contrary to the Office Action, such species are not mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first. MPEP 805.04(f). This may also be expressed by saying that to require restriction between claims limited to species, the

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claims must not overlap in scope. *Id.* This is clearly not the case for the preceding categories, which clearly are not mutually exclusive (e.g., category a is not mutually exclusive with categories b and c, category b is not mutually exclusive with category c).

Reconsideration and withdrawal of the restriction requirement are requested.

4. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each of the following allegedly patentably distinct species of microparticles:

- a. biodisintegrable; or
- b. biostable

Responsive to this requirement, Applicant elects species b), biostable microparticles for initial prosecution on the merits.

5. Applicant is required under 35 U.S.C. to elect a single disclosed species from each of the following allegedly patentably distinct species of therapeutic agent:

- a. partially or fully encapsulated within the microparticles;
- b. neither attaches to nor partially or fully encapsulated with microparticles;
- c. admixed in powder form with microparticles

Responsive to this requirement, Applicant elects species c), therapeutic agent admixed in powder form with microparticles, with traverse, for initial prosecution on the merits.

This election is made with traverse because, contrary to the Office Action, species a-c are not mutually exclusive. See also MPEP 805.04(f). The preceding categories are not mutually exclusive with one another (e.g., category c is not mutually exclusive with category b).

Reconsideration and withdrawal of the restriction requirement are requested.

6. Applicant is required under 35 U.S.C. to elect a single disclosed species from each of the following allegedly patentably distinct species in which the therapeutic agent is:

- a. unadhered to the adhesive region and occupies interstices between microparticles, or
- b. adhered to adhesive region

Responsive to this requirement, Applicant elects species b), therapeutic agent is adhered to the adhesive region. for initial prosecution on the merits.

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7. Applicant is required under 35 U.S.C. to elect a single disclosed species from each of the following allegedly patentably distinct species of medical article:

- a. comprising adhesive and therapeutic agent (claims 1-23, 26, 29-33 and 35-42);
- b. comprising additional biodisintegrable adhesive and additional therapeutic agent (claims 24-25);
- c. comprising first and second adhesive regions (claim 27);
- d. comprising first and second different therapeutic agent (claim 28); or
- e. comprising the structure of claim 34

Responsive to this requirement, Applicant elects species a), medical article comprising adhesive and therapeutic agent, with traverse, for initial prosecution on the merits.

This election is made with traverse because, contrary to the Office Action, the forgoing species are not mutually exclusive. See also MPEP 805.04(f). The preceding categories clearly are not mutually exclusive with one another (e.g., category a is not mutually exclusive with categories b, c, d and e; category b is not mutually exclusive categories c, d and e; etc.).

Reconsideration and withdrawal of the restriction requirement are requested.

8. Claim 41 is found generic to each of the following disclosed patentably distinct species:

- a. balloon;
- b. catheter;
- c. stent;
- d. patch;
- e. heart valve;
- f. bone prosthesis;
- g. pacemaker;
- h. vena cava filter; and
- i. abnormal abdominal aneurism device

In response to this requirement, Applicants hereby elect species c), stent for initial prosecution on the merits.

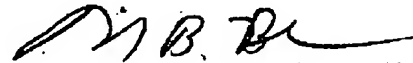
Claims 1, 5, 9-11, 12 (not exclusive to election of microspheres, as noted above), 13 (not exclusive to election of microspheres), 16 (not exclusive to election of therapeutic agent admixed in powder form with microparticles as noted above), 17-19, 22, 23, 24 (not exclusive to election of a medical article comprising an adhesive and a therapeutic agent, as noted above), 25 (not exclusive to election of a medical article comprising an adhesive and a therapeutic agent), 26, 27

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(not exclusive to election of a medical article comprising an adhesive and a therapeutic agent), 28
(not exclusive to election of a medical article comprising an adhesive and a therapeutic agent),
29-32, 34 (not exclusive to election of a medical article comprising an adhesive and a therapeutic
agent), and 35-42 are believed to encompass the elected species.

Should the Examiner be of the view that an interview would expedite consideration of the
application, request is made that the Examiner telephone the Applicants' attorney at 703-433-
0510 in order that any outstanding issues be resolved.

Respectfully submitted,

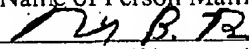


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